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November 22, 1993

BY HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

RE: ET Docket No. 93-266

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Loral Qualcomm Satellite Services, Inc. are an original and four copies of its "Reply Comments" in the above-referenced rulemaking proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

William D. Wallace
William D. Wallace

Enclosures

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OFFICE OF THE SECRETARY

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

REVIEW OF THE PIONEER'S)
PREFERENCE RULES)

ET Docket No. 93-266)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

REPLY COMMENTS OF
LORAL QUALCOMM SATELLITE SERVICES, INC.

Loral Qualcomm Satellite Services, Inc. ("LQSS"), by its attorneys, hereby submits these Reply Comments in response to the comments on the Commission's Notice of Proposed Rule Making ("Notice"), FCC 93-477 (released October 21, 1993), in the above-referenced docket. In the Notice, the Commission requested comment on whether its pioneer's preference rules (47 C.F.R. §§ 1.402-403) should be amended or eliminated in light of the Commission's new authority to assign licenses by competitive bidding. See Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, Title VI, § 6002, 107 Stat. 312, 387-97 (Aug. 10, 1993), codified at 47 U.S.C. § 309(j).

I. BACKGROUND

LQSS is an applicant for an authorization to construct "Globalstar," a low-earth orbit satellite communications system^{1/} using the MSS/RDSS frequencies. LQSS requested a pioneer's preference in connection with the Globalstar Application and filed

^{1/} LQSS' Globalstar Application was filed on June 3, 1991 (File Nos. 19-DSS-P-91(48) and CSS-91-014), and accepted for filing on October 24, 1991, Public Notice, 6 FCC Rcd 6002 (1991).

a separate Request for a Pioneer's Preference on November 4, 1991. As the Commission is aware, there are five other applicants to construct systems in these bands, and each of the four other applicants proposing low-earth orbit (LEO) systems also requested a pioneer's preference. All five requests of the LEO applicants were tentatively denied in ET Docket No. 92-28. See Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites, 7 FCC Rcd 6414, 6419-22 (1992). The Commission pointed out in the Notice, at 9 n.20, that no final decision has been issued on these five requests for pioneer's preferences. Thus, LOSS has an interest in whether the Commission changes or repeals its pioneer's preference rules.

The pleadings in ET Docket No. 92-28 reflect substantial debate over whether, how, and what information should be used to evaluate "Big LEO" applicants' requests for pioneer's preferences and what the impact would be of granting any request.^{2/} LOSS hereby incorporates its pleadings on these issues by reference,^{3/}

^{2/} The parties also raised the issue whether any award of a pioneer's preference would be consistent with the hearing requirements of Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

^{3/} See, e.g., LOSS's Comments in Support of Request for Pioneer's Preference (filed April 8, 1992); LOSS's Opposition to Motorola's Request for Pioneer's Preference (filed April 8, 1992); LOSS's Motion to Strike and Opposition to Supplement to Request for Pioneer's Preference (April 23, 1992); LOSS's Letter re Motorola's Request for Confidential Treatment (filed May 18, 1992); LOSS's Supplement to Request for Pioneer's Preference (filed June 12, 1992); Comments of LOSS on Motorola's Supplemental Filing (filed June 12, 1992).

and notes that the Commission can review these pleadings for further information into the issues raised in the Notice generally and in ET Docket No. 92-28 specifically.

II. RESPONSE TO COMMENTS

The "Big LEO" applicants submitting comments on the Notice have generally recommended that the Commission should apply its current pioneer's preference standard to issue a final decision in ET Docket No. 92-28. See Comments of Motorola Satellite Communications, Inc., at 8-10 (recommending application of existing standard); cf. Comments of TRW, Inc., at 5 (recommending decision be finalized without modification). Applying any other standard could result in substantial delay in award of licenses for MSS/RDSS.^{4/} As indicated by prior pleadings in ET Docket No. 92-28, these requests for pioneer's preferences were highly contested by the parties, and so, it is reasonable to expect delay resulting from further litigation if a new standard is applied.

In any event, the first application in the current "Big LEO" processing group has now been filed for three years. Further delay in authorization may delay the availability of new mobile communications services to be provided by these systems -- contrary to the public interest.^{5/}

^{4/} There is also a question whether application of a new standard to the "Big LEO" applicants' requests would be impermissible as a retroactive application of Commission rules. See Bowen v. Georgetown University Hosp., 488 U.S. 204 (1988).

^{5/} Under any standard, it would be an unfair and inappropriate application of the pioneer's preference rules to allow a party which missed a cut-off date for filing applications to use a later-filed request for a pioneer's preference to bootstrap itself into being licensed with the pending

Moreover, the premise of the Commission's review of the pioneer's preference rules does not apply to the "Big LEO" proceeding because it is not appropriate or necessary to assign licenses for MSS/RDSS service by auction. See Motorola Comments, at 7-9; see also Comments of Loral Qualcomm Satellite Services, Inc. (filed in PP Docket No. 93-253 on November 10, 1993).

In addition, the Commission has highlighted in the Notice that a pioneer's preference should be awarded "only for new technologies used to provide new services or that significantly improve existing services." Notice, ¶ 17. In its pleadings filed in support of its request for a pioneer's preference, hereby incorporated by reference,^{6/} LQSS described the innovative system design features of Globalstar, including patented CDMA spread spectrum techniques for reuse of spectrum, which combine to create a high-capacity, low-cost mobile satellite communications system.^{7/} LQSS contends that its request for a pioneer's

processing group. Cf. Comments of Celsat, Inc., at 9. Moreover, it should be noted that although Celsat refers to "its application in the RDSS band," id., it has not yet filed any such application.

6/ See Globalstar Application, at 6-8 (filed June, 3, 1991); Request for Pioneer's Preference (filed November 4, 1991); Comments in Support of Request for Pioneer's Preference (filed April 8, 1992); Supplement to Request for Pioneer's Preference (filed June 12, 1992).

7/ Research and development for a communications system like Globalstar is an ongoing project. For example, during the summer of 1993, Patent No. 5,233,626 ("Repeater Diversity Spread Spectrum Communications System") was issued concerning CDMA and path diversity substantially used in connection with Globalstar. Additionally, in the year since the Commission's tentative decision in ET Docket No. 92-28, further proprietary information supporting LQSS's claim of innovativeness for Globalstar has become available for public dissemination. LQSS would, of course, submit such additional

preference should be granted under the existing or any new standard for innovative technology.

III. CONCLUSION

LQSS urges the Commission to consider carefully whether to change the standard applied to evaluate the pioneer's preferences to applicants for MSS/RDSS authorizations, and not to allow its review of or approach to the pioneer's preference to delay award of licenses for MSS/RDSS service.

Respectfully submitted,

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Date: November 22, 1993

information were the Commission to reevaluate the requests for pioneer's preferences of the "Big LEO" applicants under the existing or any new standard.

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 22nd day of November 1993, caused copies of the foregoing "Reply Comments of Loral Qualcomm Satellite Services, Inc." to be served by hand-delivery (as indicated with *) or by U.S. mail, postage-prepaid, to the following:

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